

House Bill 859

By: Representatives Geisinger of the 48th, Lindsey of the 54th, Coan of the 101st, Powell of the 29th, Meadows of the 5th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and elections generally, so as to provide a definition; to require all electronic recording voting systems to produce an elector verified, permanent paper record of the votes recorded on such systems for each elector; to provide that electors shall have an opportunity to verify such record after voting; to provide for reexamination and recertification of direct recording electronic voting systems under certain circumstances; to authorize the use of certain printers and printer interfaces; to authorize the use of alternative means of voting under certain circumstances; to provide for certain recounts; to provide for additional grounds for challenging an election; to provide that such paper records be the official record of the votes in an election for use in recounts and election challenge proceedings; to provide for a random hand count of the permanent paper records at the precinct; to provide procedures for such count; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and elections generally, is amended by adding a new paragraph (21.1) to Code Section 21-2-2, relating to definitions, to read as follows:

"(21.1) 'Permanent paper record' means the paper copy record of an elector's vote that is printed by a direct recording electronic unit and is deposited or caused to be deposited by the elector in a ballot box or similar container. Such permanent paper records shall be the official records of the votes cast in a primary, election, or runoff in the case of a discrepancy between the votes shown on such paper records and the votes shown on the DRE units and for the purposes of recounts and election contests under this chapter."

SECTION 2.

Said chapter is further amended by adding new paragraphs (6.1) and (6.2) to Code Section 21-2-379.1, relating to requirements for use of electronic recording voting systems, to read as follows:

"(6.1) It shall produce an elector verified, permanent paper record with a manual audit capacity for such system which shall be available as an official record for any recount conducted under Code Section 21-2-495 or for any election challenge under Article 13 of this chapter involving any primary or election in which such system is used;

(6.2) It shall provide the elector with an opportunity to review and verify the permanent paper record before casting his or her vote on the system and to change his or her ballot or correct any error in such record or vote;"

SECTION 3.

Said chapter is further amended by revising subsection (f) of Code Section 21-2-379.2, relating to review of manufacturer's electronic recording voting system by Secretary of State, as follows:

"(f) When a direct ~~electronic recording~~ recording electronic voting system has been so approved, ~~no each~~ improvement or change ~~that does not impair its accuracy, efficiency, or capacity to a direct recording electronic voting system, whether related to hardware or software~~ shall render necessary a reexamination or reapproval of such system, or of its kind."

SECTION 4.

Said chapter is further amended by revising subsection (b) of Code Section 21-2-379.10, relating to procedure for electors using DRE units, as follows:

"(b) After the summary screen is displayed and the elector desires to make no further changes to his or her votes, the elector shall be notified that he or she is about to cast the ballot. The Prior to the elector casting his or her vote on the unit, the unit shall produce for the elector's review a permanent paper record of the elector's votes to be cast. The elector shall then review such permanent paper record and, if such record is correct, the elector shall then press the appropriate button on the unit or location on the screen to actually cast his or her ballot and cause such votes to be recorded, and to allow the permanent paper record to be deposited in a ballot box or other secure container. If the elector discovers an error or errors in the votes shown on the permanent paper record, the elector shall advise the poll officers who shall take such steps as necessary to allow the elector to correct such error or errors in the elector's votes on the DRE unit and to produce a corrected permanent paper record. The incorrect permanent paper record shall be voided and treated in the same

manner as a spoiled ballot. After pressing the appropriate button on the unit or location on the screen to cast the ballot, the elector's ~~vote~~ ballot shall be final and shall not be subsequently altered. The permanent paper records shall be secured in locked ballot boxes or similar secure containers at all times in a manner similar to paper ballots under this chapter and such ballot boxes or containers shall not be opened nor shall such permanent paper records be counted until the close of the polls. In the event that the DRE unit cannot produce a correct permanent paper record of the elector's votes, such unit shall be shut down and sealed and the superintendent and the Secretary of State shall be immediately notified of such problem."

SECTION 5.

Said chapter is further amended by revising Code Section 21-2-379.11, relating to procedure for tabulation of votes, as follows:

"21-2-379.11.

(a)(1) In primaries and elections in which direct recording electronic (DRE) voting equipment is used, ~~the ballots~~ a random sample of the permanent paper records created by the direct recording electronic units shall be counted at ~~the~~ each precinct ~~or tabulating center~~ under the direction of the ~~superintendent~~ poll manager.

(2) All persons who perform any duties at ~~the~~ a precinct or tabulating center shall be deputized by the superintendent and only persons so deputized shall touch any ballot, container, paper, or machine utilized in the conduct of the count or be permitted to be in the immediate area designated for officers deputized to conduct the count.

(b) All proceedings at the tabulating center and precincts shall be open to the view of the public, but no person except one employed and designated for the purpose by the superintendent or the superintendent's authorized deputy shall touch any ballot, any DRE unit, or the tabulating equipment.

(c) After the polls have closed and all voting in the precinct has ceased, the poll manager shall shut down the DRE units and extract the election results from each unit as follows:

(1) The manager shall obtain ~~the~~ at least three results ~~tape tapes~~ from each DRE unit and verify that the number of ballots cast as recorded on the ~~tape tapes~~ matches the public count number as displayed on the DRE unit; and

~~(2) If a system is established by the Secretary of State, the poll manager shall first transmit the election results extracted from each DRE unit in each precinct via modem to the central tabulating center of the county; and~~

~~(3)~~ The manager shall then extract the memory card from each DRE unit.

(d) Upon completion of shutting down each DRE unit and extracting the election results, the manager shall cause to be completed and signed a ballot recap form, in sufficient counterparts, showing:

- (1) The number of valid ballots;
- (2) The number of spoiled and invalid ballots;
- (3) The number of provisional ballots; and
- (4) The number of unused provisional ballots and any other unused ballots.

The manager shall cause to be placed in the ballot supply container one copy of the recap form and any unused, defective, spoiled, and invalid ballots, each enclosed in an envelope.

(e) The manager shall collect and retain the zero tape and one of the results ~~tape~~ tapes for each DRE unit and place such tapes with the memory card for each unit and enclose all such items for all of the DRE units used in the precinct in one envelope which shall be sealed and initialed by the manager so that it cannot be opened without breaking the seal.

(f)(1) After collecting the tapes from the DRE units, the manager shall randomly select one contested race from the ballot for a hand count. Such selection shall be made by listing all of the contested races on the ballot individually on uniform sized slips of paper, uniformly folding such slips of paper such that the name of the race cannot be seen, placing the slips of paper into a container and mixing the slips thoroughly, and then drawing from the container one slip of paper. Upon drawing the slip of paper, the manager shall then announce the race that will be hand counted. The slips of paper shall be available for examination by any member of the public who desires to do so.

(2) After randomly selecting the race for a hand count, the manager or a poll officer under the direction of the manager shall unlock the ballot boxes containing the permanent paper records and shall count the number of records in such ballot boxes which number shall then be entered onto a recap sheet and compared to the number of persons shown as having voted on the electors list, the numbered list of voters, and the voters' certificates. Any discrepancy shall be duly noted.

(3) After completing the count of the number of permanent paper records contained in the ballot boxes, the manager shall then proceed to count the votes cast in the randomly selected race as shown on the records. Such count shall be performed in the same manner as for paper ballots as provided in Code Section 21-2-437 for the randomly selected race. Upon the conclusion of the count, the manager or a poll officer under the direction of the manager shall record the results of the hand count on the return sheet and shall compare the results for the race to the results shown on the tapes from the DRE units for such race. In the event of a discrepancy in the count between the totals for such race, the manager or a poll officer under the direction of the manager shall post the results of the hand count

1 and one set of return tapes from the DRE units, noting any discrepancies found, at the
2 polling place for the information of the public.

3 (4) After performing the hand count of the race or races, the manager shall cause the
4 permanent paper records to be securely sealed in the ballot box and shall seal the return
5 sheets, tally sheets, one set of return tapes, and other completed forms in an envelope for
6 transfer to the election superintendent.

7 (g) The manager and one poll worker shall then deliver the ~~envelope~~ ballot boxes and
8 envelopes to the tabulating center for the county or municipality or to such other place
9 designated by the superintendent and shall receive a receipt therefor. The copies of the
10 recap forms, unused ballots, records, and other materials shall be returned to the designated
11 location and retained as provided by law.

12 (g)(h) Upon receipt of the sealed envelope containing the zero tapes, results tapes, and
13 memory cards, the election superintendent shall verify the signatures on the envelope.
14 Once verified, the superintendent shall break the seal of the envelope and remove its
15 contents. The superintendent shall then download the results stored on the memory card
16 from each DRE unit into the election management system located at the central tabulation
17 point of the county in order to obtain election results for certification.

18 (i) In the event of a discrepancy between the hand count totals from the precincts and the
19 totals from the DRE memory cards, the superintendent shall use the hand count totals as
20 the official results. The superintendent shall immediately make the public aware of any
21 such discrepancy by posting notice of such discrepancy at his or her office for the
22 information of the public and on the official website of the county or municipality on which
23 the county or municipality posts election returns if the county or municipality has such a
24 website. The superintendent shall note on the official returns for the primary, election, or
25 runoff, as appropriate, the vote totals that are based, in whole or in part, on hand counts as
26 a result of a discrepancy between the hand count and the machine totals."

27 SECTION 6.

28 Said chapter is further amended by adding new Code Sections 21-2-379.12 and 21-2-379.13
29 to read as follows:

30 "21-2-379.12.

31 Until the federal Elections Assistance Commission established pursuant to the federal Help
32 America Vote Act of 2002 adopts standards for printers attached or connected to direct
33 recording electronic voting equipment and used for the purpose of providing elector
34 verified, permanent paper records with a manual audit capacity for the votes cast by each
35 individual voter on such equipment and until printers designed or authorized for use with
36 the direct recording electronic voting equipment in use in this state have been certified

1 under such standards, no provision of this chapter nor any rule or regulation of the
2 Secretary of State or the State Election Board shall prohibit the use of direct recording
3 electronic voting equipment that utilizes such printers for such purpose on the basis that
4 such printers or printer interfaces have not received certification or that such direct
5 recording electronic voting equipment has not been certified for use with such printers or
6 printer interfaces in primaries and elections from an independent testing authority that tests
7 and certifies voting equipment or other certifying body or entity.

8 21-2-379.13.

9 If 20 percent or more of the direct recording electronic units at a precinct become
10 inoperative for whatever reason during a primary, election, or runoff, the superintendent
11 shall provide alternative means of voting at such precinct. Provisional ballots may be used
12 for such purpose, but shall be deemed to be regular ballots for which the provisional ballot
13 procedures shall not be applicable unless the elector casting the ballot qualifies as a
14 provisional voter under Code Section 21-2-418, in which case the ballot shall continue to
15 be handled as a provisional ballot."

16 **SECTION 7.**

17 Said chapter is further amended by adding new subsections (e) and (f) to Code Section
18 21-2-495, relating to procedure for recount or recanvass of votes, to read as follows:

19 "(e) Any other provision of this Code section to the contrary notwithstanding, a candidate
20 may petition the Secretary of State, in the case of a candidate in a race which is voted upon
21 by electors in more than one county, or the election superintendent, in the case of races
22 voted upon by electors in one county or a portion of one county, for a hand recount of the
23 permanent paper records in a county when it appears that there is a discrepancy in a
24 precinct in such county between the hand count of a randomly selected race pursuant to
25 subsection (f) of Code Section 21-2-379.11 and the results for the same race as shown on
26 the DRE units. Upon receiving a proper petition, the Secretary of State or the election
27 superintendent, as appropriate, shall order a hand count to be conducted of all of the
28 permanent paper records for such race in such county. Such hand count shall be held at
29 any time prior to the certification of the consolidated returns by the Secretary of State. The
30 hand count shall be conducted by the appropriate superintendent or superintendents in the
31 manner and pursuant to the procedures otherwise provided in this Code section for
32 counting paper ballots. The petition pursuant to this Code section shall be in writing and
33 signed by the person or persons requesting the hand count. The petition shall set forth the
34 discrepancies and any evidence in support of the petitioner's request for a hand count and
35 shall be verified. The result of such hand count shall then become the official result of

1 such primary, election, or runoff. The cost of such recounts shall not be charged to any
2 candidate, political party or body, or elector.

3 (f) Any other provision of this Code section to the contrary notwithstanding, a candidate
4 or ten or more electors who cast ballots in the race in which the candidate ran may petition
5 the Secretary of State, in the case of a candidate in a race that is voted upon by electors in
6 more than one county, or the election superintendent, in the case of a candidate in a race
7 that is voted upon by the electors of one county or a portion of one county, for a hand
8 recount of the permanent paper records in all precincts when it appears that there are
9 similar discrepancies in more than one precinct between the hand count of a randomly
10 selected race pursuant to subsection (f) of Code Section 21-2-379.11 and the results for the
11 same race as shown on the DRE units. Upon receiving a proper petition, the Secretary of
12 State or the election superintendent, as appropriate, shall order a hand count to be
13 conducted of all of the permanent paper records for such race in all precincts. Such hand
14 count shall be held at any time prior to the certification of the consolidated returns by the
15 Secretary of State or the election superintendent, as appropriate. The hand count shall be
16 conducted by the appropriate superintendent or superintendents in the manner and pursuant
17 to the procedures otherwise provided in this Code section for counting paper ballots. The
18 petition pursuant to this Code section shall be in writing and signed by the person or
19 persons requesting the hand count. The petition shall set forth the discrepancies and any
20 evidence in support of the petitioner's request for a hand count and shall be verified. The
21 result of such hand count shall then become the official result of such primary, election, or
22 runoff."

23 SECTION 8.

24 Said chapter is further amended by revising Code Section 21-2-522, relating to grounds for
25 contesting an election, as follows:

26 "21-2-522.

27 A result of a primary or election may be contested on one or more of the following
28 grounds:

29 (1) Misconduct, fraud, or irregularity by any primary or election official or officials
30 sufficient to change or place in doubt the result;

31 (2) When the defendant is ineligible for the nomination or office in dispute;

32 (3) When illegal votes have been received or legal votes rejected at the polls sufficient
33 to change or place in doubt the result;

34 (4) For any error in counting the votes or declaring the result of the primary or election,
35 if such error would change the result;

(5) When there is an unexplained discrepancy between the results of a hand count of a race pursuant to subsection (f) of Code Section 21-2-379.11 and the results of such race as shown by the DRE units in a precinct in which the person filing the contest was a candidate and such discrepancy places the results of such race in doubt; or

(5)(6) For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election."

SECTION 9.

This Act shall become effective on January 1, 2008.

SECTION 10.

All laws and parts of laws in conflict with this Act are repealed.